

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF)	
WESKEAG FISHERIES FOR A LIMITED-)	FINDINGS OF FACT,
PURPOSE AQUACULTURE LEASE LOCATED)	CONCLUSIONS OF LAW
IN THE WESKEAG RIVER, SOUTH)	AND DECISION
THOMASTON, KNOX COUNTY, MAINE)	

On December 4, 2002, Weskeag Fisheries of South Thomaston, Maine applied for a limited-purpose (experimental) commercial type, aquaculture lease totaling .46 acre in the coastal waters of the State of Maine, located in the Weskeag River, South Thomaston, Knox County, Maine. The applicant requested the lease for a term of three (3) years for the purpose of cultivating American oysters (Crassostrea virginica), bay scallops (Argopectin irradians), quahogs (Mercenaria mercenaria), and soft shell clams (Mya arenaria) using suspended culture techniques. The application was accepted as complete on March 4, 2003. A public hearing on this application was held on November 19, 2003 at 7:00 p.m. in South Thomaston.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a limited-purpose lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the November 19, 2003 public hearing. At the public hearing, testimony was given by the applicant, Ralph Hamill, the Department's Aquaculture Environmental Coordinator, Jon Lewis and five members of the public.

According to the application and the testimony by the applicant, the proposed experimental lease is sought to determine the commercial viability of raising American oysters, bay scallops, quahogs, and soft shell clams. The applicant requested a lease site totaling .46 acre and a lease term of three (3) years. The applicant testified that the proposed site would be used for the final two-week grow-out stage for American oysters. He stated that the oysters would be grown up river on another aquaculture site, TILT WR2, then brought to the proposed site for two weeks before going to market. The oysters would be suspended from a 40 x 20 ft. finfish pen that has been boarded over. The structure is the same structure that has been used in the proposed lease site for the past year in relation to the use of the area as a relay site. The applicant testified that operations may expand to two structures, but initially the site would contain one 40 x 20 ft. structure. According to the applicant, he may also employ an upweller at the site that would be located adjacent to the pier. Additionally, bottom cages may be used during the winter months to store the oysters. The proposed lease site would be accessed from Mr. Hamill's property, which abuts the proposed site. According to the application, all seed shellfish would be obtained from Marshall Point Sea Farms in Port Clyde, Muscongus Bay Aquaculture in Bristol, and Beals Island Hatchery in Beals Island.

In accordance with Department regulations, Chapter 2.64(2), the applicant provided an environmental characterization of the proposed lease area. According to the application, the bottom of the proposed lease site consists of soft mud with a harder, pebble bottom toward the

channel. The depths are estimated to be approximately 19 feet at mean high water and 10 feet at mean low tide. According to the application, current speed is estimated to be 0 to 7 knots and flows in a north/south direction. Resident flora and fauna consist of green crabs, periwinkles, soft-shell clams, small shrimp, smelts, starfish, blue mussels, black ducks, cormorants, and black tipped gulls. According to the applicant, oysters are filter feeders and therefore the proposed lease activities will not have a detrimental environmental impact.

The applicant testified that the proposed lease activities should not interfere with navigation. The applicant testified that the proposed lease site is located adjacent to, and not within the channel, and that the pen would be located in the middle of the site, approximately 30 feet from the channel. He stated that there are approximately 12 moorings in the area and approximately 20 boats move up and down the river, but they should not have a problem getting past the lease area. According to the applicant, the bottom cages would be used only in the winter, would be marked on the surface with buoys and therefore would not pose a problem for navigation. The applicant provided a written statement by Marine Patrol Officer Michael Young regarding the existing uses of the proposed lease site. MPO Young stated that there is limited commercial and recreational activity in the area. He stated that he has observed clam digging, lobstering, urchin harvesting and striper fishing in the area in the past. According to the application, the proposed lease activities would not restrict any commercial fishing other than dragging and diving. Other uses of the area, such as lobstering and recreational fishing would be permitted.

The Department's Aquaculture Environmental Coordinator (AEC) and his assistant conducted a site visit at the proposed lease area on September 18, 2003. During the site visit, a diver survey, utilizing an underwater video camera, was performed. The AEC created a site report summarizing the information obtained during the site visit and provided testimony regarding the site report at the public hearing. According to the report and the AEC's testimony, the proposed lease site has been used as a relay site for the past year. Because of a water quality closure in the upper part of the Weskeag River, oysters could not be harvested for human

consumption from that area and needed to be relayed to an open area for 14 days prior to harvest. According to the AEC, the applicant has had gear in the proposed lease area for the relay activities. According to the AEC's report, bottom topography of the proposed lease site consists of rock, cobble and shell gradually increasing in depth towards the channel. Water depths at the proposed lease site are between 3 and 9 feet at mean low water. Local fauna observed during the site visit include an abundance of periwinkles and hermit crabs, a common occurrence of blue mussels, sea stars, green crabs, rock crabs, sand shrimp, and American oysters, and an occasional occurrence of lobsters, waved whelk, red beard sponge, soft-shell clam, scallop, and burrowing anemone. Knotted wrack, rockweed, and hollow-stemmed kelp and other red, green and brown alga were commonly observed in patches throughout the lease area. Sea colander and unattached sea lettuce were commonly observed. Eelgrass fronds were also observed in the lease area during the survey, but were not attached.

According to the AEC, one mooring was observed within the proposed lease boundaries and seven other moorings were located within 350 feet of the proposed lease site. The majority of the moorings are located north of the proposed lease site, along the boundary of the channel. According to the AEC, the proposed lease activities are not expected to preclude access to these moorings. Due to shallow water depths at low tide, there is limited cause to deviate from the channel and use the proposed lease site for navigation and mooring access. According to the AEC, the proposed lease is located on the southern boundary of the navigational channel. Shallow water depths and the existing mooring field leave little room for navigation. However, due to the proximity to the applicant's pier and the shallow water depths, limited vessel traffic is expected in the southern portion of the lease site. In his report, the AEC expressed a concern for the submerged cages in the northern section of the proposed lease site causing a navigational hazard due to their proximity to the channel. However, after learning that the submerged cages would only be used during the winter months, the AEC testified that his concerns were alleviated. He further testified, however, that the submerged cages should be

marked on the surface with buoys, and that the buoys may actually aid navigation by marking the channel.

According to the AEC, no commercial or recreational fishing was observed within the lease boundaries during the site visit. Seven buoys, presumably lobster trap buoys, were observed in the surrounding area between the proposed lease site and the northern shore of the river. According to the AEC, due to the location of the proposed lease site between the applicant's pier and a mooring field, little commercial fishing is expected in the area. However, some recreational fishing may occur in the shallows surrounding the proposed site. According to the report, the nearest aquaculture lease is located up river, approximately .41 miles from the proposed lease site.

The AEC contacted MPO Young regarding this lease application. MPO Young described commercial fisheries in the area as limited and indicated that lobstering and some urchin diving occur in the area. MPO Young stated that while the presence of a structure in the area did create a tight navigational corridor, he had not received any complaints about navigation regarding the structure that has been in the lease site for the past year for the relay activities.

According to the AEC's report the proposed lease is located in an area classified as open/approved for the harvest of shellfish by the Department's Water Quality Division. Also, according to the report the proposed lease site is not located in an "Essential or Significant Wildlife Habitat" regulated by the Department of Inland Fisheries and Wildlife (IF&W).

IF&W provided written comments regarding this lease application. According to IF&W biologist Keep Kemper, the location of the proposed activity is within a high value coastal waterfowl and wading bird habitat. However, IF&W did not oppose the application, as the impacts to wildlife would be minimal.

Five members of the public testified at the hearing in support of the proposed lease.

Findings of Fact

The proposed lease is located in the Weskeag River between the applicant's pier and the navigational channel. Access to the proposed lease would be from Mr. Hamill's abutting property. There are eight moorings located in the area of the proposed lease site. The majority of the moorings are located north of the proposed lease area, on the border of the navigational channel. The proposed lease activities will not impede access to the moorings. The riparian land that will be used to access the site is owned by the applicant, Ralph Hamill. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed lease is located on the southern boundary of the navigational channel in water depths of approximately 3-9 feet at low water. The structure to be used in the proposed lease activities will be located in the middle of the lease site, approximately 30 feet from the channel. This same structure has been used on the site for the past year for the relay of shellfish to open waters. There have been no reported problems with navigation relating to this structure in this location. Bottom cages will be used only during the winter months and will be marked on the surface with buoys. Due to shallow water depths and the location of the mooring field there is no reason to deviate from the channel for navigation. Based on the foregoing, I find that the proposed lease will not unreasonably interfere with navigation.

There is limited commercial and recreational fishing activity in the area of the proposed lease. The nearest existing aquaculture lease is located .41 miles from the proposed lease site. Recreational and commercial fishing, other than dragging and diving, will be permitted on the lease site. The area of the proposed lease is classified as open for the harvest of shellfish. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

The bottom of the proposed lease site consists of rock, cobble and shell. The current flow is 0-7 knots and runs in a north/south direction. American oysters are filter feeders and therefore no feed or other pollutants will be discharged into the water at the proposed lease site. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the

ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

All seed shellfish will be obtained from Marshall Point Sea Farms, Muscongus Bay Aquaculture and Beals Island Hatchery. Based on this evidence, I find that there is an available source of American oysters.

The proposed lease site is not located within 1,000 feet of any public beaches, parks or docking facilities. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of American oysters, bay scallops, quahogs, and soft shell clams to be cultured for the lease site; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested limited-purpose commercial lease of .46 acre from the date of this decision for the purpose of cultivating American oysters (Crassostrea virginica), bay scallops (Argopectin irradians), quahogs (Mercenaria mercenaria), and soft shell clams (Mya arenaria) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$1,500 if the total square footage of all structures on the lease is less than or equal to 400 square feet or \$5,000 if the total square footage of all structures on the lease is greater than 400 square feet. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. commercial and recreational fishing and boating activities shall be allowed on the open areas of the lease;
2. all marking shall be in accordance with U.S. Coast Guard and Department of Marine Resources requirements; and
3. bottom cages shall be marked on the surface with buoys.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources